



Recommended readings 2017 Session of the Arbitration Academy.

1) Course: Introduction to the Court of Arbitration for Sport (CAS)

By Mr. William Sternheimer

- <http://www.tas-cas.org/en/bulletin/cas-bulletin.html>
- <http://www.tas-cas.org/en/jurisprudence/archive.html>

2) Course: The Assessment of Economic Loss in damages claims in International Arbitration

By Mr. Anthony Charlton

- <http://kluwarbitrationblog.com/2011/11/29/valuation-approaches-and-the-financial-crisis-part-1-market-methods/>
- <http://kluwarbitrationblog.com/2012/01/26/discounted-cash-flows-part-2-valuation-and-the-financial-crisis/>
- <http://kluwarbitrationblog.com/2012/04/10/asset-based-methods-part-3-valuation-and-the-financial-crisis/>

3) Course: Investment Arbitration: General Principles

By Prof. Gary Born

- Background reading: McLachlan article on the connection between investment treaties and IL (includes a discussion of FET and the doctrine of necessity as case studies)
- Definition of investment: Rubin article
- On expro: OECD working paper on indirect expro; Fortier and Drymer article
- On FET: McLachlan, Shore and Weiniger excerpt
- On procedural questions: Schreuer article on waiting periods, forks, and umbrella clauses
- On damages: Ripinsky excerpt

- Example award: Saluka

4) Course: Is International Commercial Arbitration Truly International?

By Ms. Funke Adekoya, SAN

1. Siegfried H. Elsing and John M. Townsend, 2014. *“Bridging the Common Law-Civil Law Divide in Arbitration”*. *Arbitration International* (2002) vol. 18 No. 1, pg. 59
2. Javier Rubinstein, *“International Commercial Arbitration: Reflection at the Crossroads of the Common Law and Civil Law Traditions Perspective”*, 5 *Chicago Journal of International Law* 303 (2004).
3. Pierre Tercier and Tetiana Bersheda, *‘Chapter 7- Document Production in Arbitration: A Civil Law Viewpoint’* published in *The Search for “Truth” in Arbitration-ASA Special Series No. 35*, 2011.
4. *“Assumptions regarding Common Law versus Civil Law in the Practice of International Commercial Arbitration”*: http://www.arbitration-icca.org/media/4/67308804210771/media1131942141570201-common_law_versus_civil_law_.pdf
5. Berwin Leighton Paisner: http://www.blplaw.com/media/download/BLPDiversity_on_Arbitral_Tribunals_-_Survey_Report.pdf. https://www.blplaw.com/media/download/Diversity_on_arbitral_tribunals_-_background_note.pdf.
6. U. Ewelukwa Ofodile, *“Africa and International Arbitration: From Accommodation and Acceptance to Active Engagement”*, *Transnational Dispute Management (TDM)*, TDM/Arbitral Women special on *“Dealing with Diversity in International Arbitration”*, July 2015.
7. *“Public Policy as Ground for Refusal of International Arbitral Awards - A Comparison Between Different Judicial Practices”* - *Journal of Politics and Law*; Vol. 9, No. 10; 2016

5) Course: The PCA and State-to-State Arbitration

By Mr. Brooks Daly

Brooks W. Daly, *“The Permanent Court of Arbitration”*, in C. Giorgetti (ed.), *The Rules, Practice, and Jurisprudence of International Courts and Tribunals* (Martinus Nijhoff Publishers 2012), pp. 37-73

Tom Bingham, *“The Alabama Claims Arbitration”* in *The International and Comparative Law Quarterly*, Vol. 54, No. 1, at 1-25 (Cambridge University Press, Jan., 2005). https://www.jstor.org/stable/3663355?item_view=read_online

Christine Gray and Benedict Kingsbury, *“Developments in Dispute Settlement: Inter-State Arbitration since 1945”* in *The British Year Book of International Law 1992* (Oxford University 1993), pp. 79- 134.

Robert Jennings, “The differences between conducting a case in the ICJ and in an Ad Hoc Arbitration Tribunal: An Inside View,” in *Liber Amicorum Judge Shigeru Oda* Vol 2., at 893 (Nisuke Ando et. al. eds., 2002).

Final Award of 17 September 2007, Guyana v. Suriname, Permanent Court of Arbitration.

<https://www.pcacases.com/web/sendAttach/902>

Final Award of July 22, 2009, Abyei Arbitration, Permanent Court of Arbitration.

<https://www.pcacases.com/web/sendAttach/698>

Brooks W. Daly, “The Abyei Arbitration: Procedural Aspects of an Intra-State Border Arbitration,” in *Leiden Journal of International Law*, Vol. 23, Issue 4, at 801 (2010).

Reasoned Decision on Challenge to H.E. Judge Sir Christopher Greenwood, The Republic of Mauritius v. The United Kingdom of Great Britain and Northern Ireland <https://www.pcacases.com/web/sendAttach/1792>

Final Award of March 18, 2015, The Republic of Mauritius v. The United Kingdom of Great Britain and Northern Ireland

<http://www.pcacases.com/pcadocs/MU-UK%2020150318%20Award.pdf>

Request for Arbitration of the Republic of Ecuador of June 28, 2011, The Republic of Ecuador v. The United States of America, Permanent Court of Arbitration. <https://pcacases.com/web/sendAttach/576>

Press Release of 12 July 2016, “The Tribunal Renders Its Award”, The Republic of Philippines v. The People's Republic of China, Permanent Court of Arbitration. <https://pcacases.com/web/sendAttach/1801>

Balkan Insight, Croatia May Quit Arbitration Case over Piran Gulf, 24 July 2015

<http://www.balkaninsight.com/en/article/court-wants-to-continue-arbitration-for-piran-gulf>

Arbitration between Croatia and Slovenia: Leaks, Wiretaps, Scandal (Part 3), EJIL Talk Blog, Leaks, Wiretaps, Scandal, 25 August 2015 <http://www.ejiltalk.org/arbitration-between-croatia-and-slovenia-final-part-3/>

Arbitration Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia, 4 November 2009. <http://www.mvep.hr/files/file/dokumenti/arbitraza/en/150902-arbitration-agreement->

[between-the-government-of-croatia-and-the-government-of-slovenia-04112009.pdf](#)

Press Release of 30 June 2016, “Tribunal Issues Partial Award: Arbitration Between Croatia and Slovenia to Continue”, Arbitration Between the Republic of Croatia and the Republic of Slovenia, Permanent Court of Arbitration.

<https://pcacases.com/web/sendAttach/1785>

Partial Award of 30 June 2016, Arbitration Between the Republic of Croatia and the Republic of Slovenia, Permanent Court of Arbitration.

<https://pcacases.com/web/sendAttach/1787>

Reference and Further Background Reading

International Bar Association Rules on the Taking of Evidence in International Arbitration (2010)

http://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx#takeevidence

Permanent Court of Arbitration Optional Rules for Arbitration between Two States (1992) https://pca-cpa.org/wp-content/uploads/sites/175/2016/01/Optional-Rules-for-Arbitrating-Disputes-between-Two-States_1992.pdf

PCA Arbitration Rules 2012 <https://pca-cpa.org/wp-content/uploads/sites/175/2015/11/PCA-Arbitration-Rules-2012.pdf>

International Bar Association Guidelines on the Conflicts of Interest in International Arbitration (2014) http://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx#takeevidence

UNCITRAL Arbitration Rules, G.A. Res. 31/98, U.N. Doc. A/RES/31/98 (Dec. 15, 1976) (1976 UNCITRAL Rules) http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1976Arbitration_rules.html

UNCITRAL Arbitration Rules, G.A. Res. 65/22, Art. 26, U.N. Doc. A/RES/65/22 (Dec. 6, 2010) (2010 UNCITRAL Rules) <http://www.hkiac.org/documents/Arbitration/Arbitration%20Rules/pre-arb-rules-revised.pdf>

Arbitration Agreement between The Government of Sudan and The Sudan People’s Liberation Movement / Army on Delimiting Abyei Area

<https://pcacases.com/web/sendAttach/675>

William E. McDonald “The Pious Fund of the Californias” in *The Catholic Historical Review*, Vol. 19, No. 4 (Jan., 1934), pp. 427-436

P. Hamilton, H.C. Requena, L van Scheltinga & B. Shifman, eds., *The Permanent Court of Arbitration: International Arbitration and Dispute Resolution: Summaries of Awards, Settlement Agreements and Reports* (Kluwer Law International, 1999)

Belinda Macmahon & Fedelma Claire Smith, eds., *Permanent Court of Arbitration Summaries of Awards 1999-2009* (TMC Asser Press, 2010)

State-to-State Arbitration Reading list Page 2 of 3

Shabtai Rosenne, *The Hague Peace Conferences of 1899 and 1907 and International Arbitration: Reports and Documents* (T.M.C. Asser Press, 2001)

Brooks W. Daly, "The Permanent Court of Arbitration in Indian Treaties: Its Role, Potential Procedural Problems, and Drafting Solutions" in *The Indian Journal of International Law: A Quarterly*, Vol. 47, Issue 3, at 359.

6) **Course : Conflicts of interest and challenging arbitrators in international arbitration**

By Mr. Mohamed Abdel Wahab

Books (General): - Fouchard Gaillard Goldman on International Commercial Arbitration, Savage and Gaillard Edition, 1999.

Arbitration Academy 2017 – Special Course Conflict of Interest and Challenging Arbitrators in international Arbitration – The MENA Region Experience

- Nigel Blackaby, Constantine Partasides, Alan Redfern and J. Martin Hunter, Redfern and Hunter on International Arbitration, Oxford University Press, Sixth Edition, 2015.
- Gary Born, International Commercial Arbitration, International Arbitral Procedures, Volume II, Kluwer Law International, Second Edition, 2014.
- Gary Born, International Arbitration: Law and Practice, Kluwer International Law, Second Edition, 2015.
- Stavros L. Brekoulakis, Julian D. M. Lew and Loukas A. Mistelis, The Evolution and Future of International Arbitration, Kluwer International Law, 2016. (Chapter 23: Conflicts Disclosures: The IBA Guidelines and Beyond, Alexis Mourre, pp. 357-364).
- Abdel Hamid El Ahdab and Jalal El Ahdab, Arbitration with the Arab Countries, Kluwer Law International, 2011.
- Herman Verbist, Erik Schäfer and Christophe Imhoos, ICC Arbitration Practice, Kluwer International Law, Second Edition, 2015.

- Maxi Scherer, Lisa Richman and Rémy Gerbay, *Arbitrating under the 2014 LCIA Rules: A User's Guide*, Kluwer Law International, 2015.
- Jason Fry, Simon Greenberg and Francesca Mazza, *The Secretariat's Guide to ICC Arbitration*, ICC Publication 729, Paris, 2012.
- Loukas A. Mistelis, *Concise International Arbitration*, Kluwer International Law, Second Edition, 2015.
- Christoph Schreuer, Loretta Malintoppi, August Reinisch and Anthony Sinclair, *The ICSID Convention A Commentary*, Second Edition, 2009.
- Lucy Reed, Jan Paulsson and Nigel Blackaby, *Guide to ICSID Arbitration*, Kluwer Law International, 2010.
- Howard M. Holtzmann, Joseph E. Neuhaus, Edda Kristjánsdóttir and Thomas W. Walsh, *A Guide to the 2006 Amendments to the UNCITRAL Model Law on International Commercial Arbitration: Legislative History and Commentary*, Kluwer Law International, 2015.
- Pierre A. Karrer, *Introduction to International Arbitration Practice*, Kluwer Law International, 2014.

Rules:

- IBA Rules of Ethics for International Arbitrators, 1987.
- IBA Guidelines on Conflict of Interest, 2004 and 2014.
- ICSID Convention, Arbitration Rules, 2006.
- UNCITRAL Arbitration Model Law, 2010.
- ICC Arbitration Rules, 2012 (revised in 2017).
- LCIA Arbitration Rules, 2014. - SCC Arbitration Rules, 2017.
- CRCICA Arbitration Rules, 2011.
- DIAC Arbitration Rules, 2007.
- DIFC-LCIA Arbitration Rules, 2016.
- EMAC (Emirates Maritime Arbitration Centre) Arbitration Rules, 2016.
- BCDR-AAA Arbitration Rules, 2013.
- CIMAC Arbitration Rules.

- QICCA, Arbitration Rules 2012. III. Specific Readings: Books:
- Thomas Clay, *L'Arbitre*, Dalloz, 2001.
- Karel Daele, *Challenge and Disqualification of arbitrators in International Arbitration*, Kluwer Law International, 2012.
- Sam Luttrell, *Bias Challenges in International Commercial Arbitration: The Need for a "Real Danger" Test*, Kluwer International Law, 2009.
- Park William W., *Arbitration International Special Edition on Arbitrator Challenges*, Kluwer Law International, 2011.
- Alfonso Gomez-Acebo, *Party-Appointed Arbitrators in International Commercial Arbitration*, Kluwer Law International, 2016.
- Tony Cole, *The Roles of Psychology in International Arbitration*, Kluwer Law International, 2017.

Journals/periodicals:

- Hassan Arab, John Gaffney and Malak Nasreddine, "The Revision of Article 257 of the UAE Penal Code: Concerns, Context, and a call to Countermand", in *International Journal of Arab Arbitration*, 2016, Volume 8, Issue 2, pp. 13-22.
- Michael Black, "Arbitral Bias and MENA Disputes in London", in *International Journal of Arab Arbitration*, 2016, Volume 8, Issue 2, pp. 37-52.
- Mercedes Torres Lagarde, "Liability of Arbitrators in Dubai: Still a Safe Seat of Arbitration", in *ASA Bulletin*, Volume 33, Issue 4, 2015.
- Nathalie Voser and Angelina M. Petti, "The Revised IBA Guidelines on Conflicts of Interest in International Arbitration", in *ASA Bulletin*, Volume 33, Issue 1, 2015.
- James D. Fry and Juan Ignacio Stampalija, "Forged Independence and Impartiality: Conflicts of Interest of International Arbitrators in Investment Disputes" in *Arbitration International*, Volume 30, Issue 2, 2014.
- Charles B. Rosenberg, "Challenge and Disqualification of Arbitrators in International Arbitration by Karel Daele", in *Arbitration International*, Volume 29, Issue 1 2013.
- Charles B. Rosenberg, "Challenging Arbitrators in Investment Treaty Arbitrations", in *Journal of International Arbitration*, Volume 27, Issue 5, 2010.

7) Workshop: ICSID Arbitration Practice

By Ms. Aurelia Antonietti

- Chapter 1: Introduction to ICSID in Lucy Reed , Jan Paulsson , et al., Guide to ICSID Arbitration, Kluwer Law International; Kluwer Law International 2010, pp. 1 – 22
- An Overview of Provisional Measures in ICSID Proceedings, Anthony C. Sinclair; Odysseas G. Repousis, ICSID Review, Vol. 32 Issue 2 Spring 2017.
- ICSID Background Report on Annulment, May 5, 2016, available online at <https://icsid.worldbank.org/en/Pages/resources/Background-Papers.aspx>

8) Course: The annulled Arbitral Award

By. Mr. Haris Pamboukis.

A. General Authorities

- Born Gary, International Commercial Arbitration (2nd edn, 2015) 3621-3645
- Blackaby Nigel and others, Redfern and Hunter on international arbitration, (6th edn, Oxford University Press 2015) 633-639B.

B. Specific Articles

- Koch, The Enforcement of Awards Annulled in their Place of Origin, Journal of International Arbitration, 2009, 267 seq
- Silberman and Scherer, Forum shopping and Post Award Judgments, PKU Transnational Law Review, 2014 [vol2:1], 115-156 in F. Ferrari (ed.) Forum shopping in the International Commercial Arbitration Context, 2013, 313 seq.
- Mann, Lex Facit Arbitrum, in Sanders, Liber amicorum Martin Domke, (La Haye, 1967) 157
- Albert van den Berg, Enforcement of Arbitral Awards Annulled in Russia, (2011) 28 J. Int. Arb.
- Charalampos Pamboukis, The Annulled Arbitral Award, 17 (2015/2016) Yearbook of Private International Law, 83-110

C. Cases- Netherlands No. 34, OAO Rosneft (Russian Federation) v. Yukos Capital s.a.r.l. (Luxembourg), Hoge Raad [Supreme Court], First Chamber, 09/02565 EE, 25 June 2010

- Yukos Capital Sarl v OJSC Oil Co Rosneft [2014] EWHC 2188 (Comm)
- Judgment of 10 June 1997, Omnium de Traitement et de Valorisation v. Hilmarton, 1997 Rev. arb. 376 (French Cour de cassation civ. 1e)
- Chromalloy Aero Services v Egypt, 939 F.Supp 907 (DDC 1996)

A. Introduction of the problem

- Born Gary, International Commercial Arbitration (2nd edn, 2015) 3621-3645
- Blackaby Nigel and others, Redfern and Hunter on international arbitration, (6th edn, Oxford University Press 2015) 633-639
- Gaillard Emmanuel, Savage John and Fouchard Philippe, Fouchard, Gaillard, Goldman on international commercial arbitration (Kluwer Law International 1999) 966-98
- Koch, The Enforcement of Awards Annulled in their Place of Origin, Journal of International Arbitration, 2009, 267 seq

B. Traditional Approaches to the problem

a. Territoriality

- F.A. Mann, *Lex Facit Arbitrum*, in: *Liber amicorum Martin Domke*, (ed. P. Sanders), La Haye, 1967, 157 et seq
- Albert van den Berg, *Enforcement of Annulled Arbitral Awards?*, 9(2) ICC Ct. Bull. 15, 16 (1998)
- Albert van den Berg, *Residual Discretion And Validity Of The Arbitration Agreement In The Enforcement Of Arbitral Awards Under The New York Convention*, *Current Legal Issues in International Commercial Litigation*, SICBL Publications, Vol. VIII, 1996

b. Moving away from the Territoriality: Delocalisation Approach

- Gaillard, *Enforcement of Awards Set Aside in the Country of Origin: The French Experience*, in A. van den Berg (ed.), *Improving the Efficiency of Arbitration Agreements and Awards: 40 Years of Application of the New York Convention* 505, 512 (1999)
- Luca Radicatti di Brozolo, *The Control System of Arbitral Awards. A Pro Arbitration Critique of Michael Reisman's 'Architecture of International Commercial Arbitration' in Arbitration – The Next Fifty Years*, ICCA Congress Series 2012, 74 seq

C. Are the traditional approaches satisfactory? The response from the USA

- Ray Chan, *'The Enforceability of Annulled Foreign Arbitral Awards in the United States: A Critique of Chromalloy'* (1999) 17 BU Int'l LJ 141.
- Pedro J. Martínez-Fraga, *'On the 50th Anniversary of the New York Convention, Revisiting Annulment and Vacatur Through the Prism of in re: Chromalloy, Baker Marine, and TermoRio'*, (2008) *Arbitraje: Revista de Arbitraje Comercial y de Inversiones*
- Born Gary, *International Commercial Arbitration* (2nd edn, 2015) 3628-3634

D. Proposed solutions

a. Jurisdictional approach

- M. Scherer, *Effects of Foreign Judgments Relating to International Arbitral Awards: Is the Judgment Route the Wrong Road?* 4 J. Int'l. Disp. Settlement, 2013, 587 et seq
- L. Silberman & M. Scherer, *Forum shopping and Post Award Judgments*, PKU Transnational Law Review, 2014 [vol2:1], 115-156 = in F. Ferrari (ed.) *Forum shopping in the International Commercial Arbitration Context*, 2013, 313 seq.

b. Local Standard Annulment v. International Standard Annulment

- Jan Paulsson, *Enforcing Arbitral Awards Notwithstanding a Local Standard Annulment*, 9 ICC Int'l Ct. Of arb. Bull. 14 (1998).

c. Amendment of the NYC to the concept of the European Convention

- Albert van den Berg, Enforcement of Arbitral Awards Annulled in Russia, (2011) 28 J.Int.Arb., 6

d. Pamboukis [A refined jurisdictional approach by adding a protocol to the NYC]

- Charalampos Pamboukis, 'La sentence arbitrale annulée Jurisdictio facit Arbitrum' in UNIDROIT (ed) *Eppur si muove: The age of Uniform Law –Festschrift for Michael Joachim Bonell, to celebrate his 70th birthday* (Volume I, UNIDROIT 2016) – in French

- Charalampos Pamboukis, The Annulled Arbitral Award, 17 (2015/2016) Yearbook of Private International Law, 83-110

Case List

A. Introduction of the problem

- Netherlands No. 34, OAO Rosneft (Russian Federation) v. Yukos Capital s.a.r.l. (Luxembourg), Hoge Raad [Supreme Court], First Chamber, 09/02565 EE, 25 June 2010

B. Traditional Approaches to the problem

a. Territoriality

- Judgment of 28 October 1999, XXV Y.B. Comm. Arb. 717, 718 (Oberlandesgericht Rostock) (2000) (refusing to recognize awards made, but annulled, in Russia, on grounds that they were no longer “binding” and therefore not recognizable under German law).

b. Moving away from the Territoriality: Delocalisation Approach

France

- Judgment of 9 October 1984, Pabalk Ticaret Ltd Sirketi v. Norsolor SA, XI Y.B. Comm. Arb. 484 (French Cour de cassation civ. 1e) (1986).

- Judgment of 10 March 1993, Polish Ocean Lines v. Jolasry, XIX Y.B. Comm. Arb. 662, 663 (French Cour de cassation civ. 1e) (1994).

- Judgment of 10 June 1997, Omnium de Traitement et de Valorisation v. Hilmarton, 1997 Rev. arb. 376 (French Cour de cassation civ. 1e)

- Judgment of 14 January 1997, 1997 Rev. arb. 395 (Paris Cour d’appel), Note, Fouchard.

- Judgment of 29 June 2007, PT Putrabali Adyamulia v. Rena Holding et Société Mnogutia Est Epices, 2007 Rev. arb. 507 (French Cour de cassation civ. 1e);

- Judgment of 19 February 2013, République Démocratique Populaire du Lao v. Thai Lao Lignite Co., Case No. 12/09983 (Paris Cour d’appel) (“Considering that the setting aside of a foreign award by the Courts of the State in which the award has been rendered is not a ground for refusing recognition in France; there is thus no basis for revoking the order closing the proceedings to allow for the production of a judgment rendered in Kuala Lumpur, seat of the arbitration, setting aside the award.”)

Belgium

- Judgment of 6 December 1988, Société Nationale pour la Recherche, le Transport et la Commercialisation des Hydrocarbures (Sonatrach) v. Ford, Bacon & Davis, Inc., XV Y.B. Comm. Arb. 370 (Brussels Tribunal de Première Instance) (1990) (recognizing award annulled in Algeria).

Austria

- Judgment of 20 October 1993, Radenska v. Kajo, XXVIa Y.B. Comm. Arb. 919 (Austrian Oberster Gerichtshof) (1999).

C. Are the traditional approaches satisfactory? The response from the USA

- Chromalloy AeroServices v Egypt, 939 FSupp 907 (DDC 1996);
- Baker Marine (Nig) Ltd v Chevron (Nig) Ltd, 191 F3d 194 (2d Cir 1999);
- Spier v Calzaturificio Tecnica SpA, 71 FSupp 2d 279 (SDNY 1999);
- TermoRio SA v. Electrificadora del Atlantico SA, 421 F.Supp.2d 87, 101-02 (D.D.C. 2006) (U.S. court will recognize annulled award only if annulment violated U.S. public policy; Colombian court's decision that arbitration agreement could not validly incorporate ICC Rules did not violate U.S. public policy);
- Corporación Mexicana de Mantenimiento Integral, S de RL de CV (COMMISA) v PEMEX-Exploración y Producción, FSupp 2d, 2013 WL 4517225 (SDNY 27 Aug 2013);

D. Proposed solutions

a. Jurisdictional approach

- Netherlands No. 34, OAO Rosneft (Russian Federation) v. Yukos Capital s.a.r.l. (Luxembourg), Hoge Raad [Supreme Court], First Chamber, 09/02565 EE, 25 June 2010
- Yukos Capital Sarl v OJSC Oil Co Rosneft [2014] EWHC 2188 (Comm)
- Malicorp Limited v Government of the Arab Republic of Egypt, Egyptian Holding Company for Aviation, Egyptian Airports Company [2015] EWHC 361 (Comm)